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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/681,436 | 10/08/2003 | Harry James Mumford | 03-039-PT-LA | 7133 |
| 32616 | 7590 | 01/24/2006 | EXAMINER | |
| LAW OFFICE OF L. JACK GIBNEY 8777 SAN JOSE BLVD. SUITE 502 JACKSONVILLE, FL 32217 | | | POLLICOFF, STEVEN B | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3728 | |

DATE MAILED: 01/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|---------------------------------|----------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 10/681,436 | MUMFORD, HARRY JAMES |
| | Examiner Steven B. Pollicoff | Art Unit 3728 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 08 October 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-20 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 08 October 2003 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

| | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>10/08/03</u> . | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Claim Objections

1. Claim 15 is objected to because of the following informalities: It seems that a period was mistakenly placed at the end of line 2 in the middle of the claim. Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2 and 3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear as to how Applicant defines "concentric" circles. The disclosure does not disclose concentric circles within the ordinary accepted definition of concentric. None of the recessed circles (800,900) are concentric. It is also unclear as to where the different size diameters are located with respect to the base and each other.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Lehman (U.S. Pat. No. 4,901,846).

With respect to claim 1, Lehman discloses a device (Lehman Fig. 1) with a base (Fig 1, 30), spindle (Fig. 4, 52), clamp (Fig. 1, 40), compression spring (Fig. 4, 58) and a handle (Fig. 4, 50) that carries identically shaped cans.

With respect to claim 15, Lehman discloses that the compression spring is placed between the underside of the handle and the top of the clamp and exerts a force to secure the objects to be clamped in their appropriate positions (Fig. 4 generally; see also Column 4, lines 1-5)

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lehman '846 in view of Distler (U.S. Pat. No. 6,036,020).

Lehman discloses that the device has a flat bottom surface (Fig. 2, 30) and a top surface (Fig. 2, 32) containing recessed circles placed on both sides equidistant from the midpoint of the base. Lehman does not disclose that the recessed circles are concentric. However, Distler disclose a tray (Distler Fig. 2, 10) with a concentric hexagonal shape and a circle (Fig. 2, 20 and 30 respectively) to accommodate a large or small container to be placed within the recess. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the Lehman tray to include concentric recessed circles, as taught by Distler, for the purpose of holding various sized containers. While the hexagonal shape is not a circle, it would have been an obvious matter of design choice to change the shape of the upper recess to be circular, since such a modification would have involved a mere change in the shape of a component and not interfere with the function of the recesses. A change in shape is generally recognized as being within the level of ordinary skill in the art. *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966).

As to claims 3, it would have been an obvious matter of design choice to modify the size of the top surface circular recesses of the Lehman invention to fit quart size or pint size cans since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Claims 6-9,11-14 and 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lehman '846.

As to claims 6-8,12-14 and 18-20 because Applicant has not disclosed any criticality in the material selection of the spindle, clamp or handle, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have the spindle, clamp or handle made out of plastic, aluminum or stainless steel (all well known in the art) since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

As to claim 9, it would have been an obvious matter of design choice to modify the size of the hole running through the middle of the clamp of the Lehman invention so that the spindle can be inserted into it since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

As to claim 11, official notice is taken that it is old and conventional to provide handle bars on clamping or movable parts for easier handling, lifting and securing of objects to be clamped. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention in view of the official notice to provide two pieces of metal threaded in the side of the clamp and secured with a lock nut to allow a user to lift the clamp and remove the object being held. With respect to the threaded bars being inserted into the clamp and secured with a lock nut, it would have been obvious to one

of ordinary skill in the art at the time of the invention in view of the official notice to provide any means that secures handles to the side of a clamping or movable part (such as a threaded or welded connection) so that the user of the device may lift the clamp to remove the secured object.

As to claim 16, it would have been an obvious matter of design choice to modify the length and width of the handle of the Lehman invention to allow a hand to easily pick it up since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

As to claim 17, it would have been an obvious matter of design choice to modify the size of the diameter hole bored through the middle of the handle of the Lehman invention to allow the spindle to pass through since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Claims 4 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lehman '846 in view of Pinckard (U.S. Pat. No. 4,277,006).

As to claim 4, Lehman discloses that the middle of the base is equipped with a hole and two internal ridges to accommodate a vertical spindle with locking rods to hold the clamping assembly together (Lehman Column 3, lines 67-68; Column 4, lines 1-5 and 23-29). Lehman does not disclose that the middle of the base is equipped with a tapped and threaded hole to accommodate the spindle. However, Pinckard discloses a

base (Pinckard Fig. 1, 12) with a tapped and threaded hole (Column 1, lines 60-64) to accommodate the threaded spindle. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the Lehman invention to include a base with a tapped and threaded hole, as taught by Pinckard, for the purpose of providing a more secure, stable, self-standing carrier for a variety of different sized objects (Column, 1, lines 23-26 and 30-32).

As to claim 10, Lehman does not disclose that the underside of the clamp has two recessed and curved grooves. However, Pinckard discloses a clamp with two recessed and curved grooves (Pinckard Fig. 1, 42 and 44) to accommodate the shape of the object to be clamped. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the Lehman invention to include a clamp with recessed and curved grooves to better accommodate the object to be secured between the clamp and base section (Pinckard Column 2, lines 13-15).

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lehman '846 in view of Madden (U.S. Pat. No. 2,956,813).

As to claim 5, Lehman does not disclose that the spindle is threaded at both ends or secured into place at the top by a hex nut. However, Madden discloses a clamp with a spindle, threaded at both ends to connect clamping elements and that the spindle is secured in place by a wing nut (Madden Fig. 4, 62). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the Lehman invention to include a spindle threaded at both ends and a hex nut to secure the spindle in place, as taught by Madden, for the purpose of better securing (i.e.

tightening and aligning) or removing the object to be gripped between the base and the clamp (Madden Column 3, lines 38-48; Column 5, lines 8-13). While Madden does not disclose a hex nut, the wing nut of the Madden invention provides the same function and a hex nut could be easily substituted.

Conclusion

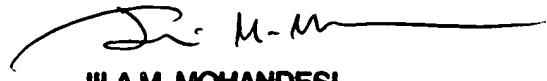
5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Jenkins et al., (U.S. Pat. No. 5,042,757) discloses a clamp with a handle. Lani (U.S. Pat. No. 5,921,645) discloses a base section with multiple recesses in the top surface.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven B. Pollicoff whose telephone number is (571)272-7818. The examiner can normally be reached on M-F: 7:30A.M.-4:00P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571)272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

1/23/06
SBP


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